



**Washington State
Public Works Board**
Post Office Box 42525
Olympia, Washington 98504-2525

PUBLIC WORKS BOARD MEETING NOTES

December 4, 2012

Department of Commerce (Olympia, WA)

Board Members		Guests Present:	Staff Present:
Present:	Absent:		
Stan Finkelstein, Chair	Frank Abart	Melanie DeLeon, Executive Ethics Board	Myra Baldini
JC Baldwin		Karen Larkin, Department of Commerce	Ann Campbell
Jerry Cummins		Chris McCord, Department of Health	Cindy Chavez
Tom Fitzsimmons		Julie Parker, Thurston Public Utilities District	Terry Dale
Kathryn Gardow		Cathi Read, Small Communities Initiative	Steve Dunk
Ed Hildreth		Eric Tompkins, Department of Commerce	Christina Gagnon
Scott Hutsell			Cecilia Gardener
Don Montfort			Isaac Huang
Mark "Bubba" Scott			Lynn Kohn
Darwin Smith			John LaRocque
Steve Stuart			Bruce Lund
Larry Waters			Jennifer Motteler
			Rodney Orr
			Jacki Skaught

ADMINISTRATION

- Call to order: Chair Finkelstein called the meeting to order at 9:00 a.m.
- Introductions: Board members, guests, and staff introduced themselves.
- Approve the agenda: Steve Stuart moved to approve the agenda. Seconded by Ed Hildreth.
ACTION: Motion approved (11-0) (Baldwin, Cummins, Fitzsimmons, Gardow, Hildreth, Hutsell, Montfort, Scott, Smith, Stuart, and Waters).
- Approval of the November 2, 2012 meeting minutes was deferred to the January 2013 meeting.

COMMITTEE REPORTS

- Executive Committee, Stan Finkelstein reported:
 - Stan Finkelstein and John LaRocque met with Stan Marshburn, Director of the Office of Financial Management (OFM) on November 6, 2012 to discuss the Board's recommended 2014 Construction Loan List and the changes the Board approved based on OFM's request to reduce the total amount to \$350 million due to budget constraints. Governor elect Inslee may have an alternate version. A case was made that there is a high need to address critical infrastructure needs; this could be the jobs bill and reducing the list will not allow for growth in jobs and the economy.
 - There is currently a budget shortfall of \$900 million, plus \$1 billion for education
- Communications Committee, Kathryn Gardow reported:
 - The business cards have arrived. If Board members talk to legislators or are out and about on Board business, use these cards.



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- The draft four page information/education document was available for review. There will be more changes will be coming, and it will be ready for the January Board meetings with Legislators.
 - The Board's web page is underway.
- c) Policy Committee, Don Montfort reported:
- The bylaws are a work in progress.
 - Review underway; will come to full Board when ready; currently mostly housekeeping stuff. Meeting schedule concern: how specific should it be?
 - We have not been in compliance with our own bylaws regarding meeting times.
 - Question whether the committee should develop an annual schedule? Specific, or is not specific acceptable?
 - Kathryn Gardow noted she prefers flexible. Ed Hildreth agreed.
 - Stan Finkelstein has a scheduling conflict with Tuesday/Thursday so doesn't want days in bylaws.
 - Committee will continue to work on it.
 - Does the Board want the policy committee to begin analyzing current MOUs, or wait?
 - Stan Finkelstein said that renewing some type of MOU between the Board and the agency is critical. Going through this transition, important to have a document available and agreed upon as something to use to negotiate when there is some sense of what the leadership will be.
 - Committee will work on preliminary documents for the Board to review.
 - Called attention to the Z-Bill (policy bill) in section 4, page 7, and section j; regarding refinancing – second paragraph from the top.
 - Kathryn Gardow asked if short term debt is definable. Is it less than 1 year?
 - Stan Finkelstein answered 5 years.
 - Kathryn Gardow asked if they want it to be that.
 - Don Montfort answered that it is pre-construction. It's broad, included for flexibility.
 - Larry Waters asked what "as defined in rule by the Board" meant.
 - Stan Finkelstein explained the rulemaking process.
 - Don Montfort said that the Board must establish WAC for those other cases.
 - Stan Finkelstein asked if this language was added from where they were last time.
 - John LaRocque confirmed, and said that this bill is in front of the policy group and good to go. Does not have final approval, but the last version is in front of OFM, so unless changes were made during meeting it's ready to go in the hopper.
 - Agree to revised language as included in section 4, j: "Or other cases as defined in rule by the Board": Don Montfort moved to agree to the revised language as included in section 4, j. Jerry Cummins seconded. **ACTION: Motion approved (11-0)** (Baldwin, Cummins, Fitzsimmons, Gardow, Hildreth, Hutsell, Montfort, Scott, Smith, Stuart, and Waters).
 - Adopt bill as amended since previous meeting including: no ports, refinance language, and including pre-construction for non-traditional, and emergency. Tom Fitzsimmons moved to approve the bill with modifications that have been



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included. Steve Stuart seconded. **ACTION: Motion approved (11-0)** (Baldwin, Cummins, Fitzsimmons, Gardow, Hildreth, Hutsell, Montfort, Scott, Smith, Stuart, and Waters).

- d) Technical Assistance Committee: Steve Stuart briefed the Board on the South West Academy, said that it was good learning overall and referred to Chris's memo. Discussed draft Technical Assistance proposal, and that the committee will bring to the full Board at the next meeting.

CONTRACTING

- a) Drinking Water State Revolving Fund (DWSRF)
1. Hideaway Mobile Home Park (HMHP)
 - Steve Dunk reported that in 2008 the Board issued a contract with the HMHP for a DWSRF loan, the client invoiced 90k of 100k, drew down to the last 10% of loan (the retainage), as reported in page 35 of the board packet. Steve noted that in November 2011 staff was informed that HMHP were not able to make their loan payment. The Contracts Administration Unit (CAU) attempted to contact the client with no response for several months. In February, CAU sent a letter to the client saying that the 1% loan fee was incurring per month and that they needed to pay, but still no return contact. Recently the HMHP has contacted CAU and explained that they are filing for bankruptcy. Contractors have completed the work on the project but the HMHP has not paid the contractors. The contractor has put a lien on the park, and the City of Spokane is collecting fees from the park but have no mechanisms in place to pay the loan back. Staff recommends that the Board either refer this to the Attorney General to recapture the outstanding debt if possible, or to resolve the bankruptcy of this client. The property was foreclosed on in 2012. The improvements are part of the HMHP property, not the City of Spokane.
 - Darwin Smith asked who owns the park; Steve replied that the contractor owns the park.
 - Stan Finkelstein noted the Board paid out \$19,000 not accounted for and asked what CAU does to monitor dispersal of funds. Eric Tompkins replied that CAU monitors the clients and has documentation that \$78,000 was paid to the contractor. It appears that the client incurred the cost of the remainder, but no documentation has been provided showing that it was paid to the contractor
 - Kathryn Gardow asked if Myra Baldini had been involved with the project. Myra answered that she did a credit rating report, but not as full an analysis as is done now. Wells Fargo gave them a credit rating that warranted the loan from DWSRF; the system was under a red flag for water contamination. Staff added terms to the contract for a dedicated account but the account was not monitored to ensure it was populated with loan repayments.
 - Stan Finkelstein asked how many hookups were on the system. Staff replied that the hookups reported have ranged from 650 to 100.
 - Tom Fitzsimmons noted that it sounds like the owner went bankrupt and the Board won't know until it comes out the back end. Tom recommended the Board get an attorney to advocate their position.



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- Ed Hildreth asked where in line the Board is. Myra answered the PWB is superior but Wells Fargo had a loan before the Board, noting that system revenue is the secured loan piece, but the City of Spokane is currently receiving the user revenue.
 - Stan Finkelstein asked if anyone has computed the percentage increase in water rates per unit if the whole \$1 million is amortizing per unit; Myra answered that at the time the rent/user fees were sufficient to cover the loan.
 - Stan Finkelstein recommended the Board hands the matter over to the Attorney General for further action; Kathryn Gardow moved to refer the matter to the Attorney General; Darwin Smith seconded. **ACTION: Motion approved (11-0)** (Baldwin, Cummins, Fitzsimmons, Gardow, Hildreth, Hutsell, Montfort, Scott, Smith, Stuart, and Waters).
 - Darwin Smith asked if the Board should be seeking senior position in loans. Don Montfort noted that this was a choice the Board made to accommodate the clients and that this is the first loan to go bad.
2. Knights of Columbus
- Bruce Lund reported that the project is 97% complete and they are asking for a 3 month extension.
 - Darwin Smith moved to approve staff recommendation for an extension of the closeout date to 2/28/13; Scott Hutsell seconded. **ACTION: Motion approved (11-0)** (Baldwin, Cummins, Fitzsimmons, Gardow, Hildreth, Hutsell, Montfort, Scott, Smith, Stuart, and Waters).
3. Webster Hill Water Association
- Isaac Huang explained the client's request for temporary relief for this year's loan repayment. Isaac described how the previous owner of the water system abandoned it in 2000 and it became deteriorated, resulting in a Department of Health (DOH) compliance order being issued. Isaac explained that the DWSRF loan was applied for in 2001 and that in 2007 they completed 19 connections. In September 2012 Thurston Public Utility District (PUD) was notified that Webster couldn't make the payment. The PUD was asked to take over the system by DOH and Pierce County and took over management in August 2012, not ownership. The PUD is assisting Webster apply for a Community Development Block Grant (CDBG) in order to address long term contamination treatment. Isaac noted that Webster has gone into foreclosure and now only has three hookups and bacteria contamination requiring chlorination. Isaac introduced Julie Parker from the PUD present to answer any questions.
 - Stan Finkelstein asked what the loan is. Isaac explained it was \$66,000 with \$44,000 outstanding, explaining that Webster raised rates to \$130 per month.
 - Myra Baldini explained that Webster is operating in the red right now. She referred to the Affordability Index (AI) in Table 3 in the handout provided to the Board, showing rates compared with comparable systems with similar number of connections. \$130 per month is an AI of 2.35% and not affordable. The community is willing and able to pay this in order to repay this loan to make sure that they will be operational in the near future with the PUD. Myra explained that originally the client requested to defer only one payment but that staff was concerned the client would come back for another deferral. Staff is recommending deferral for 3 years. Staff is recommending that beginning January 1 2013, the client be required to put the money in a dedicated account, getting ready for the payment later and adopt a policy to maintain reserves.



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Myra noted that a summary of staff's recommendation is on the first page of the handout.

- Julie Parker from the Thurston County PUD explained the PUD's involvement beginning in 2012 at the request of the Department of Health. Julie explained that the PUD agreed to take over management beginning in August 2012 and are collecting payments/debts. Julie noted that staff's proposal for a 3 year deferral is very generous and will enable them to get Webster's financial system in line and stabilize their water system.
- Don Montfort asked if it is in the contract that the PUD will take over the system. Julie Parker answered that it is not in contract, but is in documentation, noting that is their policy to not take systems that are not whole or do not have a plan to become whole.
- Don Montfort asked that if they get whole, is there any inclination to not turn system over to the PUD? Julie Parker answered no, noting that the PUD has been working with the Board president and a couple of other members of the community on the system's sustainability.
- Darwin Smith asked about whether there are source issues. Julie Parker answered that the contamination is bacterial and they have adequate flow/no source issue.
- Steve Stuart noted that if the goal is to take over the system, that's a good goal for the Board. Steve asked which action from staff recommendation will get to that outcome, asking if the Board could have assurance that the PUD would ultimately take the system over. Julie Parker answered that she met with Myra Baldini and that they developed option 2 together. Julie explained that she can't provide further assurances that they won't back up and find another alternative, but she does know that given that they have been burned so badly, it's very unlikely that they will do. The PUD's track record is that they sign contract, the system gets used to it, the PUD takes care of the problems. They have had managed systems leave their control, they have systems that have been with them since 2008.
- Darwin Smith asked if the PUD has rate authority on those contracts? Julie Parker answered no, explaining that the PUD is in contact with the Board and are advising them.
- Stan Finkelstein said that the PUD could not subsidize this entity. That would be giving public funds to private.
- Ed Hildreth recused himself because he's a member of Thurston County water.
- Kathryn Gadrow suggested a one year deferral, and then the interest only for the rest of the 3 years, which would keep the system used to paying something and keep them connected with the Board.
- Tom Fitzsimmons said that he finds it intriguing that Thurston PUD is a fee based manager of the system and that they have no direct accountability on the loan, noting that he would like to see something that makes the PUD more accountable.
- Stan Finkelstein suggested that the Board could approve the recommendation on the condition that Webster makes certain agreements with the PUD. Stan asked if that has that been done before with the PUD, Julie Parker answered no.
- Don Montfort said that the implication is that Thurston PUD is profiting from the situation. Looking at the handout and comparing fee to amount spent, there's not much cushion. Trying to condition contract terms with a client based on performance from someone else seems kind of dicey. Asking Thurston PUD to take responsibility for someone else's loan, it doesn't seem like if he was on that commission, he would do it.



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- Darwin Smith said that the Board is not going to get the PUD to agree, noting that should the system decide to forgo the PUD's management, they either bring the loan back to bear as it currently is, or they have to have another plan.
- Tom Fitzsimmons clarified that he is trying to give the PUD a tool, suggesting the Board could condition the water system to sign a ten year agreement with the PUD, if the PUD is willing to do so, in order to get a better stability around the water system and enable the PUD to be more successful.
- Chris McCord with the Department of Health said that the intent is for the PUD to take over ownership but that cannot happen until the water system is viable.
- Stan Finkelstein asked what the cost of making the system viable will be. Julie Parker answered it is probably close to half a million dollars.
- Steve Stuart noted that he would like to see a structured contractual arrangement that moves towards the transfer of ownership.
- Don Montfort moved to table the discussion until after lunch. Larry Waters seconded.
ACTION: Motion approved (9-1). (Baldwin, Fitzsimmons, Gardow, Hutsell, Montfort, Scott, Smith, Stuart, and Waters). Jerry Cummins voted no, Ed Hildreth recused.

DRINKING WATER STATE REVOLVING FUND

Public Hearing on Loan Fee for Program Year 2013 Loan Program

- Cecilia Gardener referred to page 43 of the packet with the WAC identifying requirements for a public hearing for the drinking water loan fee, noting that no changes are being recommended from last year.
- Stan Finkelstein asked if anyone was present to comment. No one identified themselves.
- Darwin Smith moved to close the hearing; JC Baldwin seconded. **ACTION: Motion approved (11-0)** (Baldwin, Cummins, Fitzsimmons, Gardow, Hildreth, Hutsell, Montfort, Scott, Smith, Stuart, and Waters).
- Darwin Smith moved to approve the recommended loan fee, JC Baldwin seconded. **ACTION: Motion approved (11-0)** (Baldwin, Cummins, Fitzsimmons, Gardow, Hildreth, Hutsell, Montfort, Scott, Smith, Stuart, and Waters).

FINANCING OPPORTUNITIES

2014 Public Works Trust Fund Construction Loan List Update

- John LaRocque reviewed the current status of the 2014 recommended construction loan list and the governor's directive to reduce the total amount for the 2014 loan list to \$350. John suggested two options to achieve the reduction; option 1 – reduces the loan limit per jurisdiction to \$10 million and option 2 - reduces the loan limit per jurisdiction to \$6.3 million, as detailed in the handout provided to the Board.
- Steve Stuart asked if a letter was sent on behalf of the Board to the Governor; John LaRocque answered no, explaining that a meeting took place with Stan Marshburn, Director of the Office of Financial Management instead.
- Kathryn Gardow said she assumes Water System Acquisition and Rehabilitation Program (WSARP) and Growth Management (GMA) line items are grants, asking whether the GMA funding would go to Commerce. John answered in the affirmative.
- Don Montfort stated that the Board's recommendation does not have to be the same as OFM's request and could be framed that the original recommendation is the recommendation with additional information provided.



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- Stan Finkelstein asked if the \$350 million in the proposal assumed acceleration of the fund. John LaRocque answered yes, noting that this does not consume all the resources the Board could have and use, using acceleration.
- Karen Larkin said that the \$100 million cash diverted to the state general fund is equal to \$400 million in acceleration.
- Don Montfort said that the Board has already decided, they decided on that loan list, and it seems like the Board's decision was to have staff advocate for that original list. John LaRocque answered that the Board works for the Governor and that staff has to take the \$350 million list back to them as requested.
- Tom Fitzsimmons noted that he is hearing a path where OFM is saying 'send us the Board's list, however, we would also like your recommendation on what we could do to get that list to \$350 million.' Tom suggested the Board could frame the \$350 list as the Board's suggestion for how to get to \$350 would be to cut off projects with a certain start date and dollar amount.
- Steve Stuart suggested that for consistency a \$6.3 million cap makes sense.
- Kathryn Gadrow asked if the Board is in jeopardy of losing money. John responded that yes, in second year the Board is vulnerable, noting that staff will be bringing the Board recommendations for the upcoming 2015 cycle soon.
- Kathryn Gadrow suggested adding a column in the four pager to address the governor's version and the Board's recommendation. John LaRocque answered that they may need to ask the governor for permission to do a compare and contrast. Stan Finkelstein asked what happens on Jan 17 when Inslee submits his budget which may deviate from Governor Gregoire's budget? Kathryn Gadrow answered that the four pager will be dated; Stan Finkelstein suggested that they go with an additional page as an insert.
- Karen Larkin said that in the House Government Committee discussion on growth management, the public works assistance account came up five times, noting that the legislators are aware of the cuts, and all the speakers were advocating against taking it.
- John LaRocque said that CERB is going to be able to get \$20 million of its own resource base using the acceleration model so the Board does not need to ask for base funding for CERB, but maybe to add to their commitment to really recharge their resources base.
- Ann Campbell explained that the list provided represents who would be impacted by reducing the loan amount.
- **ACTION:** Don Montfort moved to submit a \$350 million loan list with a \$6.3 million per jurisdiction loan cap to the Governor's office. Larry Waters seconded.
- Don Montfort clarified that the motion is to give OFM the information on what would happen to the recommended loan list with a \$6.3 million loan cap at \$350 million total using the construction start date as a prioritization. **ACTION: Motion approved (10-1)** (Baldwin, Cummins, Fitzsimmons, Hildreth, Hutsell, Montfort, Scott, Smith, Stuart, and Waters). Kathryn Gardow voted no.

ETHICS TRAINING: Presentation given by Melanie deLeon, Executive Director, Executive Ethics Board

Webster Hill Water Association



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- Don Montfort noted that the Board is looking for responsible fund management and would like the utility obtaining sustainability and financial success through professional and efficient management, hopefully by a public entity. Don proposed the following conditions:
 - Borrower agrees to maintain contract management for the life of the loan or repayment of it, whichever comes first.
 - Borrower agrees to report annually to long-term contract management plan. They will have to be concerned with a permanent solution to their problems
 - Borrower agrees to set rates according to the best management practices according to the contract manager.
 - Maintain contract management, report annually on long-term contract management program, best management practices as per the PUD.

Don Montfort moved to agree generally with these conditions along with option 2 of staff recommendation. Darwin Smith seconded. **ACTION: Motion approved (11-0)** (Baldwin, Cummins, Fitzsimmons, Gardow, Hildreth, Hutsell, Montfort, Scott, Smith, Stuart, and Waters).

PWTF Pre-Construction Program Recommended List

- Terry Dale presented the recommended pre-construction project list and provided a handout to the Board. Terry clarified that pre-construction is an open cycle with removal of the exception for 2012 applicants and is on a first-come, first-served basis. Terry noted that there are three applicants that will utilize all resources and staff would like to allow Wapato to use remaining resources of \$14,000 to complete their process.

Larry Waters moved to approve staff recommendation, Darwin Smith seconded. **ACTION: Motion approved (11-0)** (Baldwin, Cummins, Fitzsimmons, Gardow, Hildreth, Hutsell, Montfort, Scott, Smith, Stuart, and Waters).

Stan Finkelstein adjourned the meeting.